

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Patry	Team: Team # 7	CCRB Case #: 200712919	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 08/31/2007 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 2/28/2009	EO SOL 2/28/2009	
Date/Time CV Reported Wed, 09/05/2007 5:30 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 09/05/2007 5:30 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. An officer			
3. CPT Michael Lipetri	00000	906647	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Tanisha Phillips	21379	932203	NARCBBN
2. DT3 James Delumen	03621	922213	NARCBBN
3. DT3 Andrew Erato	02395	925243	NARCBBN
4. DT3 Matthew Savage	06484	926077	NARCBBN
5. DT3 Fawad Khan	07739	925537	NARCBBN
6. POM Gregory Larsen	16592	925583	NARCBBX
7. LT Joseph Santangelo	00000	887586	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers pointed their guns at § 87(2)(b) and § 87(2)(b)	
B. CPT Michael Lipetri	Abuse: Cpt. Michael Lipetri authorized the entry and search of § 87(2)(b) at § 87(2)(b)	
C. An officer	Discourtesy: An officer spoke obscenely and rudely to § 87(2)(b)	

### Synopsis

On August 31, 2007, at approximately 6:00 PM, § 87(2)(b) and § 87(2)(b) were inside of § 87(2)(b) which is located at § 87(2)(b) in Brooklyn. § 87(2)(b) and § 87(2)(b) were outside of the store on the premises. Officers from Narcotics Borough Brooklyn North exited from several unmarked police vehicles with guns drawn and pointed at the above mentioned individuals and announced that they had a search warrant (**Allegation A**). Officers entered § 87(2)(b) and escorted § 87(2)(b) and § 87(2)(b) out of the store (**Allegation B**). § 87(2)(b) alleged that as the officers were entering § 87(2)(b) an officer said, "Police don't move. Freeze, don't fucking move. Get down on the floor" (**Allegation C**).

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) filed a complaint with the CCRB's call processing system on September 5, 2007 (Encl. 3A-C). On September 18, 2007, § 87(2)(b) provided a formal statement to the CCRB (Encl. 4A-G). § 87(2)(b) and § 87(2)(b) all provided formal statements (Encl. 5-7) which were generally consistent with § 87(2)(b) statement. Below is § 87(2)(b) formal statement with additional information and discrepancies from § 87(2)(b) and § 87(2)(b) statements.

On August 31, 2007, at approximately 6:00 PM, § 87(2)(b) was at § 87(2)(b) at § 87(2)(b) in Brooklyn. § 87(2)(b) asked the owner, § 87(2)(b) a friend of his, if he could charge his Ipod on a computer and § 87(2)(b) gave him permission. § 87(2)(b) entered the store, walked over to the computer, and plugged his Ipod into the computer. As he was inside, § 87(2)(b) saw PO1, a white male with blonde hair approximately 5'10", who was wearing jean shorts with a blue shirt, ask "an old guy who works there", "Where's the owner? Where's the owner?" As this happened, § 87(2)(b) was outside in front of § 87(2)(b) cleaning his car with an employee. § 87(2)(b) was sitting in a chair near § 87(2)(b) § 87(2)(b) and the owner of § 87(2)(b) § 87(2)(b) were standing out front of the store talking. According to § 87(2)(b)'s account, he walked into § 87(2)(b) and greeted § 87(2)(b) and he saw a man named § 87(2)(b) working on tires inside of the shop. § 87(2)(b) stated in his account that two black male officers in uniform approached him from a marked police car and told him to put his hands behind his back and to lie on the ground. § 87(2)(b) then kneeled on the ground. As this was happening, § 87(2)(b) stated that five unmarked police vehicles arrived on scene and 20 officers ran out of the vehicles with their guns drawn. § 87(2)(b) stated that the officers informed everyone they were under arrest and announced they had a search warrant. § 87(2)(b) saw four or five officers exit a light blue minivan that had parked in front of § 87(2)(b). A black female officer was holding a "battering ram" and a male officer was holding a "barricade" shield. PO2, who was holding the barricade shield in front of his body, entered the store. PO3, a 6'1", white male, with a slender build, short blondish hair, in his early 20s, was standing behind PO2 with his gun pointed at § 87(2)(b). As the officers entered the store they yelled, "Let me see your hands. Let me see your hands." § 87(2)(b) responded, "Wait. Wait. Wait," while looking at the gun. In his account, § 87(2)(b) stated that a 5'9" white male officer holding a shield said, "Police don't move. Freeze, don't fucking move. Get down on the floor," as he entered the store. The dog, a bullmastiff/pitbull, started barking at the officers. A white male officer entered the store and sprayed the dog with what § 87(2)(b) believed to be a fire extinguisher. In the process, the left side of § 87(2)(b) body was sprayed with the fire extinguisher. PO4, a black male officer in uniform, came in the store, grabbed § 87(2)(b) and escorted him outside of the store. § 87(2)(b) stated that an officer (no description provided) escorted him out of the store and attempted to place him on the ground, but in the process he lost his balance and fell against a bicycle and then landed on the side on the ground. § 87(2)(b) sustained no injuries as a result of this. § 87(2)(b) stated that a white male officer, taller than 6'1", with blonde hair in plainclothes ran at him,

pointed his gun at him, told him he was under arrest and placed him in handcuffs, and sat him down on his knees.

When he got outside, officers told § 87(2)(b) to lie on the ground. § 87(2)(b) responded, "In order for me to lie on the ground, I have to slam myself down on the ground. I'm not doing that." § 87(2)(b) then placed his knees on the ground, and PO5 and PO6, white males in plainclothes, approached him, grabbed him by his shoulders, handcuffed him and placed him against the ground in a prone position. § 87(2)(b) saw all the other individuals on the ground already. Officers were telling § 87(2)(b) to get on the ground but he explained to the officers that he had a motorcycle injury to his foot so he would not be able to get down on the ground in the way they were telling him to. When § 87(2)(b) was lying on the ground he saw officers searching his bag, which was inside of the store. PO2 exited the store and said to § 87(2)(b) "Ha Ha. I got you." After this, officers brought the dog downstairs into the basement. At this point, a large crowd of people had gathered around the area. § 87(2)(b) stated that there were people assembled at a cornerstore near the incident and there were people across the street. None of these people interfered with the officers. After being placed on the ground, a white transport van arrived and everyone was placed into the back of the van.

§ 87(2)(b) and § 87(2)(b) were brought to the 81<sup>st</sup> Precinct Stationhouse at approximately 7:00 PM. At some point, § 87(2)(b) was brought to an interview room and he was interrogated by a detective. Det1, an older white male with grayish blonde hair, asked § 87(2)(b) if he knew about an officer who was shot in the arm with a pellet gun earlier that morning. § 87(2)(b) told the detective that he did not know what he was talking about because he was sleeping in his house in Queens. All of the above arrested individuals were interrogated separately. Everyone was charged with § 87(2)(b) and taken to Central Booking at approximately 12:30 AM on September 1, 2007. § 87(2)(b) and § 87(2)(b) all denied that they possessed marijuana or had smoked marijuana. They also denied that anyone else was smoking marijuana.

On Sunday September 1, 2007, § 87(2)(b) went back to § 87(2)(b) and observed extensive damage to § 87(2)(b) surveillance system. § 87(2)(b) stated that two monitors that § 87(2)(b) had downstairs were gone, he had wires ripped out of the cameras, two of the cameras were broken, and one was smashed. According to § 87(2)(b) § 87(2)(b) has pictures of his surveillance set up in his basement prior to the incident and he has pictures of the system after the incident.

#### Civilians not Interviewed:

§ 87(2)(g) § 87(2)(b) scheduled interviews with the CCRB on October 10, October 15, and November 1, 2007, but he missed all of these appointments without calling ahead to cancel or reschedule.

### **Results of Investigation**

#### ***PD Documents:***

*Memo Book Entry Completed by PO Tanisha Phillips (Encl. 8A-B):*

18:35: ERT to 81 § 87(2)(b)

18:45: 9 Under from § 87(2)(b) 1 Void § 87(2)(b)

*Arrest Reports for § 87(2)(b)*

§ 87(2)(b) and § 87(2)(b) (Encl. 9-17):

All of the above individuals were arrested inside of § 87(2)(b) on August 31, 2007, at 6:45 PM, during the execution of a search warrant. A quantity of marijuana, an imitation pistol, and a quantity of

drug paraphernalia were recovered. All of the above individuals were charged with § 87(2)(b)

. The weapon recovered was a pistol, a Semiautomatic Daisy BB Gun.

*Narcotics Borough Brooklyn North 81<sup>st</sup> Precinct Module Team 1 Roll Call for August 31, 2007 (Encl. 18A-B):*

On August 31, 2007, Det. James Delumen, Det. Matthew Savage, PO Fawad Khan, and PO Gregory Larsen worked a tour of 13:33 by 22:00. Det. Andrew Erato worked a tour of 14:27 by 23:00 and PO Tanisha Phillips worked a tour of 14:33 by 23:00. Cpt. Michael Lipetri and Lt. Joseph Santangelo were assigned to the pre-execution plan for the search warrant but their tours were not listed on the roll call.

*Pre/Post-Execution Plan for Search Warrant (Encl. 19A-B):*

Captain Lipetri was the overall supervisor and Lt. Santangelo was assigned as the search supervisor. PO Phillips was assigned to be the recorder and the arresting officer. Det. Savage was assigned to bunker and Det. Delumen was assigned to bunker security. Det. Erato and PO Khan were assigned to front security and cuff toss. PO Larsen was assigned to side security and cuff toss. An 81<sup>st</sup> Precinct sector automobile was assigned to front security and as a hospital automobile. Possible unknown weapons and a dog inside the subject location were listed as potential hazards. The search warrant plan also shows a diagram of § 87(2)(b).

*Search Warrant Issued by the Supreme Court of the State of New York, Part MM, County of Kings (Encl. 20):*

“Proof by affidavit having been made this day before me by Police Officer Tanisha Phillips, Shield NO. 21379, Brooklyn North Narcotics Division, that there is probable cause for believing that certain property namely: a handgun, ammunition and Marijuana; paraphernalia commonly used to process and package controlled substances; documents relating to illegal trafficking of controlled substances and the ownership and recent occupation of the location; U.S. currency relating to the illegal trafficking of controlled substances; will be found in § 87(2)(b) § 87(2)(b) Brooklyn N.Y.

You are therefore commanded, between 6:00 AM and 9:00 PM, without prior notice of purpose or authority, this request being based upon the type of evidence to be seized, namely controlled substances that are easily disposed of (e. g. being flushed into a drain), to make an immediate search of § 87(2)(b) and of any other person found in the above premises or seen exiting, entering, or attempting to enter or exit the above premises during the warrant execution, including, anyone who may be found to have such property in his/her possession, or under his/her control, or to whom such property may have been delivered, and if you find any such property or any part thereof to bring it, and this warrant, without unnecessary delay, before any judge or justice in Part Misc., 320 Jay Street, Brooklyn, New York.”

The search warrant described § 87(2)(b) § 87(2)(b) as a one story commercial building situated between Hull and Saratoga Avenues. There is a yellow awning that reads “§ 87(2)(b) § 87(2)(b) is clearly marked on said awning

The warrant was signed by Judge § 87(2)(b) at § 87(2)(b).

*Disposition of Case:*

§ 87(2)(b), § 87(2)(c)

Civilian's Criminal Conviction History:

§ 87(2)(b)

and § 87(2)(b) have not been convicted of any crimes in the past.

Civilian's CCRB History:

§ 87(2)(b)

and

§ 87(2)(b) have not made any prior complaints with the CCRB. § 87(2)(b) was the complainant in CCRB Case § 87(2)(b) § 87(2)(b)

**Recommendations and Conclusions**

*Undisputed Facts:*

Officers exited vehicles with guns drawn and pointed at the individuals who were on the premises of § 87(2)(b). Officers entered and searched § 87(2)(b).

*Disputed Facts:*

The only disputed fact is whether an officer entered § 87(2)(b) and said to § 87(2)(b) "Police don't move. Freeze, don't fucking move. Get down on the floor."

*Assessment of Evidence:*

§ 87(2)(b) and § 87(2)(b) all provided detailed and generally consistent statements about what transpired at § 87(2)(b) on August 31, 2007. On § 87(2)(b), a judge signed a search warrant authorizing the search of § 87(2)(b) in Brooklyn. The civilian accounts comported with each other, as they described the incident as a routine search warrant absent of the use of excessive physical force. The only discrepancy amongst the civilian statements was that § 87(2)(b) alleged that an officer entering § 87(2)(b) said, "Police, don't move. Freeze, don't fucking move." § 87(2)(b) who was in the store at the time that this allegedly happened, made no mention of it happening. Additionally, § 87(2)(b) and § 87(2)(b) who were on the sidewalk in front of the store provided no statement corroborating this allegation. § 87(2)(g)

Allegations not Pleased:

§ 87(2)(g)

According to the pre-execution search warrant a fire extinguisher was a tool assigned to PO Larsen. It is common for the NYPD to use fire extinguishers as a tool against dogs to ensure officers' safety (Encl. 26)

§ 87(2)(g)

Allegation (A): Officers pointed their guns at § 87(2)(b)

and § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) all stated that officers who entered § 87(2)(b) and officers who secured the perimeter or § 87(2)(b) drew and pointed their guns at everyone who was at § 87(2)(b). In the OATH case *PD v. Gliner* (OATH Index No. 955/00), the judge stated that the Police Department “permits an officer broad discretion to display his weapon whenever he feels that his life or the life of another is endangered... The determination as to when that exercise of discretion rises to the level of misconduct must be made by assessing the reasonableness of the officer's actions in the totality of the surrounding circumstances... Due deference should be given to the judgment of the officer at the time and scene of the incident” (Encl. 1A-E). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B): Cpt. Michael Lipetri authorized the entry and search of § 87(2)(b) at § 87(2)(b)

§ 87(2)(b)

The officers who entered § 87(2)(b) at § 87(2)(b) were executing a narcotics search warrant for marijuana, marijuana paraphernalia used to process and package controlled substances, documents relating to illegal trafficking of controlled substances, U.S. currency relating to illegal trafficking of controlled substances, a handgun, and ammunition, which was issued by Brooklyn the Brooklyn Supreme Court. § 87(2)(g)

It is undisputed that the commercial building was searched for narcotics. According to Barry Kamins’ *New York Search and Seizure* (Encl. 1F), “Many search warrants, after listing the premises to be searched and the designated property to be seized, will also authorize the search of any other person therein who may be found to have such property in his possession under his control. The authority for this language is derived from CPL 690.15 (2), which states that a search warrant which directs a search of a designated or described place, premises or vehicle, may also direct a search of any person present thereat or thereon.” § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C): An officer spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b) alleged that an officer yelled “Police don’t move. Freeze, don’t fucking move. Get down on the floor,” as he entered § 87(2)(b) § 87(2)(b) who was in the § 87(2)(b) at the same time the officers entered the premises stated that the officers entered the store yelling, “Let me see your hands. Let me see your hands.” § 87(2)(b) made no mention of an officer ever using any obscene or rude language while on scene. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: